Chinchilla Theatrical Scenic, LLC *and* International Alliance of Theatrical and Stage Employees, Local 8. Case 22−CA−200613

January 7, 2019

DECISION AND ORDER

BY CHAIRMAN RING AND MEMBERS MCFERRAN AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that Chinchilla Theatrical Scenic, LLC (the Respondent) failed to file an answer to the complaint or amended complaint. Upon a charge and an amended charge filed by International Alliance of Theatrical and Stage Employees, Local 8 (the Union) on June 13 and August 18, 2017, respectively, the General Counsel issued a complaint on October 25, 2017, and an amended complaint on March 1, 2018, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The Respondent failed to file an answer to either the complaint or amended complaint.

On June 20, 2018, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. Thereafter, on June 21, 2018, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted, and on July 10, 2018, the Board issued a Supplemental Notice to Show Cause. The Respondent filed no response.[1] The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days of service of the complaint, unless good cause is shown. In addition, the complaint and amended complaint affirmatively stated that unless an answer was received by November 8, 2017, and March 15, 2018, respectively, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint and amended complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that by letter dated December 6, 2017, the Acting Regional Attorney of Region 22 advised the Respondent that unless an answer to the complaint was received by December 13, 2017, a motion for default judgment would be filed.[2] Nonetheless, the Respondent failed to file an answer.

Accordingly, in the absence of good cause being shown for the failure to file an answer, we deem the allegations in the amended complaint to be admitted as true, and we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a limited liability company with an office and place of business in Scottsdale, Arizona, and has been engaged in the design and construction of theatrical sets. In conducting its operations during the 12-month period preceding issuance of the amended complaint, the Respondent performed services valued in excess of $50,000 in states other than the State of New Jersey.[3]

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and

[1] The Notice to Show Cause dated June 21, 2018, was served on the Respondent via certified and regular mail was returned to the Board as "Not Deliverable as Addressed/Unable to Forward." The Supplemental Notice to Show Cause dated July 10, 2018, was served by electronic mail on the Respondent at the email address at which it consented to receive eService, consistent with Sec. 102.4(c) of the Board's Rules and Regulations, and there is no indication that the Respondent did not receive the email.

[2] Although the mailed copies of documents including the complaint and letters described above were returned to the Region as undeliverable, the motion for default judgment and attached exhibits were served by electronic mail on the Respondent at the email address at which it consented to receive eService, and there is no indication that the Respondent did not receive the email. Moreover, the attachments to the General Counsel's motion for default judgment contain email communications between the Respondent and the Region, to and from that email address. In those email communications, dated between July 11, 2017, and August 16, 2017, the Region requested the Respondent's position in response to the attached charges, as well as the Respondent's correct mailing address, and reminded the Respondent of the deadline for submitting evidence. In response, the Respondent's general manager of technical services expressed the reasons why it would not be "doing business with" the Union, and otherwise failed to address the Region's requests.

In any event, it is well settled that a respondent's failure or refusal to accept certified mail or to provide for receiving appropriate service cannot serve to defeat the purposes of the Act. See *Cray Construction Group, LLC*, 341 NLRB 944, 944 fn. 5 (2004); *I.C.E. Electric, Inc.*, 339 NLRB 247, 247 fn. 2 (2003).

[3] Although par. 3 of the complaint, which contains the allegations above, does not specifically allege that the Respondent has a place of business in New Jersey, it is clear from the remaining complaint allegations that the bargaining unit employees perform services for the Respondent in the State of New Jersey. In addition, the charges list the Respondent's address in North Bergen, New Jersey.

(7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Brett Rothstein	Senior Scenic Production Manager
Justin Matthews	General Manager of Technical Services

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All employees who perform construction, fabrication, assembling, erecting, application, presentation, dismantling, maintenance repair, handling, placement, loading, unloading, or operation of hydraulic, electronic and sound equipment or devices, slide projectors, lasers, liquid projectors, pyrotechnics, computers and all other types of theatrical effects or apparatus and all scenery, drops, travelers, trusses, scaffolding, iron work, properties, decorations, displays, or other staging of theatrical accessories and effects associated and/or substitute materials of every kind in the Philadelphia/Trenton/Camden Metropolitan Areas.

At all material times, the Union has been the designated exclusive bargaining representative of the unit and has been recognized as the representative by the Respondent. This recognition has been embodied in a collective-bargaining agreement (the Agreement), which is effective from February 14, 2017, through December 31, 2017.

At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

Article VI (Payroll) of the Agreement provides:

> Section 1. The employer agrees to make dues deductions from each employee's gross income from the employer at a rate of three and one half percent (3.5%) of such gross wage. Such deduction shall be forwarded to the Union on or about the fifteenth day of each month following the month of the deduction.
>
> Section 2. Employer shall provide proof of payroll. Employer shall make all deductions and pay all taxes as required by law. Employer shall provide workers compensation insurance. If employer is unable to provide the payroll, employer agrees to use Payroll Company supplied by the Local.
>
> Section 3. Employer agrees to make payroll no later than fifteen days of submitted bill. In such cases that payroll is not received within fifteen days a ten percent charge will be added.

Since about late February 2017, the Respondent has failed to continue in effect the terms and conditions of employment described above by abrogating Article 6 of the Agreement by refusing to pay three employees who performed services at 600 Tabernacle Road, Medford, New Jersey for the Respondent under the terms of the Agreement.

The Respondent engaged in the conduct described above without the Union's consent.

The terms and conditions set forth above relate to wages, hours and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

CONCLUSION OF LAW

By the conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(5) and (1) of the Act. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by failing to continue in effect the terms and conditions of employment described in Article 6 of the Agreement with the Union, we shall order the Respondent to bargain with the Union as the exclusive collective-bargaining representative of the unit employees and to give full force and effect to the terms and conditions of employment provided in the collective-bargaining agreement in effect from February 14, 2017 through December 31, 2017. In addition, we shall order the Respondent to make the three unit employees who performed services at 600 Tabernacle Road, Medford, New Jersey, whole for any loss of earnings and other benefits they may have suffered as a result of the Respondent's failure to pay them, in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd.

444 F.2d 502 (6th Cir. 1971), plus interest accrued to the date of payment at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

We shall also order the Respondent to compensate unit employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards and to file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

ORDER

The National Labor Relations Board orders that the Respondent, Chinchilla Theatrical Scenic, LLC, Scottsdale, Arizona, and North Bergen, New Jersey, its officers, agents, successors, and assigns shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with International Alliance of Theatrical and Stage Employees, Local 8, as the exclusive collective-bargaining representative of the employees in the bargaining unit by failing to continue in effect the terms and conditions of employment provided in the collective-bargaining agreement in effect from February 14, 2017, through December 31, 2017, by refusing, without the Union's consent, to pay employees who performed services for the Respondent. The unit is:

> All employees who perform construction, fabrication, assembling, erecting, application, presentation, dismantling, maintenance repair, handling, placement, loading, unloading, or operation of hydraulic, electronic and sound equipment or devices, slide projectors, lasers, liquid projectors, pyrotechnics, computers and all other types of theatrical effects or apparatus and all scenery, drops, travelers, trusses, scaffolding, iron work, properties, decorations, displays, or other staging of theatrical accessories and effects associated and/or substitute materials of every kind in the Philadelphia/Trenton/Camden Metropolitan Areas.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit.

(b) Give full force and effect to the terms and conditions of employment provided in the collective-bargaining agreement in effect from February 14, 2017, through December 31, 2017.

(c) Make the three unit employees who performed services at 600 Tabernacle Road, Medford, New Jersey, whole for any loss of earnings or other benefits suffered as a result of the Respondent's failure, since late February 2017, to continue in effect the terms of the collective-bargaining agreement, in the manner set forth in the remedy section of this decision.

(d) Compensate affected employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its facilities in Scottsdale, Arizona, and North Bergen, New Jersey, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since late February 2017.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(g) Within 21 days after service by the Region, file with the Regional Director for Region 22 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 7, 2019

John F. Ring, Chairman

Lauren McFerran, Member

William J. Emanuel Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with International Alliance of Theatrical and Stage Employees, Local 8 as the exclusive collective-bargaining representative of our employees in the bargaining unit by failing to continue in effect the terms and conditions of employment provided in the collective-bargaining agreement in effect from February 14, 2017, through December 31, 2017, by refusing, without the Union's consent, to pay employees who performed services for us. The unit is:

> All employees who perform construction, fabrication, assembling, erecting, application, presentation, dismantling, maintenance repair, handling, placement, loading, unloading, or operation of hydraulic, electronic and sound equipment or devices, slide projectors, lasers, liquid projectors, pyrotechnics, computers and all other types of theatrical effects or apparatus and all scenery, drops, travelers, trusses, scaffolding, iron work, properties, decorations, displays, or other staging of theatrical accessories and effects associated and/or substitute materials of every kind in the Philadelphia/Trenton/Camden Metropolitan Areas.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union as the exclusive collective-bargaining representative of our unit employees.

WE WILL give full force and effect to the terms and conditions of employment provided in the collective-bargaining agreement in effect from February 14, 2017, through December 31, 2017.

WE WILL make our three unit employees who performed services at 600 Tabernacle Road, Medford, New Jersey whole for any loss of earnings and other benefits they may have suffered as a result of our unlawful conduct, with interest.

WE WILL compensate affected employees for the adverse tax consequences, if any, of receiving lump-sum backpay awards, and WE WILL file with the Regional Director for Region 22, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay awards to the appropriate calendar years for each employee.

CHINCHILLA THEATRICAL SCENIC, LLC

The Board's decision can be found at www.nlrb.gov/case/22-CA-200613 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.